177 FERC ¶ 61,109

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Golden Spread Electric Cooperative, Inc. Docket No. IN21-9-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued November 18, 2021)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Golden Spread Electric Cooperative, Inc. (Golden Spread). This order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2021), into whether Golden Spread violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2021), by offering Golden Spread's Mustang Station generating unit into the Southwest Power Pool (SPP) market in a manner that improperly targeted and increased Day-Ahead Market make whole payments received by the unit.

2. Golden Spread stipulates to the facts in Section II of the Agreement, but neither admits nor denies the alleged violations in Section III of the Agreement. Golden Spread agrees to: (a) pay disgorgement plus interest, totaling $375,000; (b) pay a civil penalty of $550,000 to the United States Treasury; (c) be subject to compliance monitoring as provided more fully below; and (d) enhance its compliance program to include additional training requirements as provided more fully below.

I. Facts

3. Golden Spread is a non-profit, consumer-owned generation and transmission electric cooperative headquartered in Amarillo, Texas, owned and operated by 16 member cooperatives. Golden Spread's members provide electric service to approximately 306,000 electric meters serving member consumers located in the Panhandle, South Plains and Edwards Plateau regions of Texas, the Panhandle of Oklahoma, and small portions of Southwest Kansas and Southeast Colorado. Golden Spread owns and operates Mustang Station, a 521 MW (nameplate rated) natural gas-fueled combined cycle unit comprised of two combustion turbine generators and a steam turbine generator.

4. During the investigation, Enforcement found evidence of an offering strategy at Mustang Station related to make whole payments. Make whole payments compensate

resource owners for their commitment and incremental energy costs[1] for the period that SPP commits the unit in the Day-Ahead Market or through the reliability unit commitment (RUC) process, where market revenues are insufficient to cover the resource's short run variable costs. SPP has explained that the specific purpose of make whole payments is to keep resource owners indifferent to SPP's commitment decisions by incentivizing them to offer their units to SPP in market status so that SPP can make and optimize unit commitment decisions for the entire SPP market, as opposed to resource owners self- committing their units.

5. In SPP, there are five types of commitment status that resource owners may specify when submitting offers, two of which were relevant here: self-commit and market. A unit is eligible for a Day-Ahead Market make whole payment only for the hours it is offered in the Day-Ahead Market in market status and is committed by SPP.

6. SPP performs its Day-Ahead Market make whole payment calculation on a make whole payment eligibility period basis over a given Operating Day. Specifically, as part of its calculation, SPP assesses whether a unit makes a profit or loss, in the aggregate, over the entire eligibility period it is online, in market status, and committed by SPP. SPP's calculation ignores hours when a unit is in self-commit status. Only if the aggregate profit or loss for all the hours the unit was in market status that day equals a loss, will SPP issue a make whole payment equal to the aggregate loss.[2]

7. SPP thus does not provide a make whole payment on an hourly basis for hourly losses. Rather, SPP's make whole payment provisions are designed to compensate units for a loss that occurs over an eligibility period over a given Operating Day. The purpose of this make whole payment is not profit maximization, but to ensure that a unit at least breaks-even (i.e., its aggregate compensation at least equals its aggregate short run variable costs over the eligibility period).[3]

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[1] A unit's commitment costs include the cost of bringing an offline resource online and the hourly cost of operating a synchronized resource at 0 MW output. *See* SPP, OATT, attach. AE Integrated Marketplace, § 1.1 & 8.5.9 (11.2.1). A unit's incremental energy cost is the cost of producing and transporting the next available unit of electrical power. *See id.* We will use the term short run variable costs to mean a resource's commitment costs and incremental energy costs.

[2] A resource offered in market status that is committed in the Day-Ahead Market receives market revenues that are at least equal to its offered incremental energy costs. However, those market revenues may not be sufficient to also recover the resource's commitment costs. These unrecovered commitment costs over the entire eligibility period represent the resource's aggregate loss and the amount for which the resource is made whole. *See* SPP, OATT, attach. AE Integrated Marketplace, § 8.5.9 (11.2.1).

[3] *See* Agreement at PP 4, 7.

8. After an extended outage, Mustang Station returned to service on January 22, 2016. Around that time, John P. Wieck, an electric trading analyst for Golden Spread, began analyzing whether Golden Spread could strategically offer Mustang Station in self-commit status during certain hours of the Operating Day as a way to obtain increased make whole payments from SPP.

9. Golden Spread first tested Mr. Wieck's strategy by splitting Mustang Station's Day-Ahead offer between hours 1 and 12 in self-commit status and hours 13 and 24 in market status. When the market results came back, he determined that as he forecasted, Golden Spread could increase make whole payments at Mustang Station by strategically selecting self-commit status to isolate those times during the Operating Day when Golden Spread forecasted that the unit would be profitable, from those times when it forecasted that the unit would be unprofitable. By isolating those profitable times, the aggregate profit or loss for all the remaining hours of the day, when the unit was in market status, would equal a loss, and SPP would issue a make whole payment. Offering Mustang Station in this manner had the effect of garnering make whole payments for the unit for its losses on an hourly basis.

10. During this period, Tyson Boatler, Golden Spread's Manager Electric Trading and Mr. Wieck's direct supervisor, acknowledged internally his understanding that pursuant to SPP's make whole payment provisions as set forth in the SPP tariff and associated market protocols, Mustang Station had been kept whole on a daily basis, not an hourly basis.

11. On March 15, 2016, Golden Spread began implementing the make whole payment strategy. Mr. Wieck explained that his goal was for Mustang Station to be made whole to a greater amount and avoid negating a make whole payment because the unit's On-Peak revenues were covering the cost of its Off-Peak losses.

12. Golden Spread implemented the strategy through September 14, 2016, and received $314,151 in make whole payments from the SPP market as a direct result.

13. Golden Spread cooperated fully with the investigation.

II. Violations

14. During the investigation, Enforcement found evidence that Golden Spread offered Mustang Station in market status when it expected Mustang Station to be unprofitable, and switched to self-commit status in hours when it expected Mustang Station to be profitable, in order to isolate and exclude profitable hours from SPP's daily eligibility period-based make whole payment calculation.

15. Enforcement also found that Golden Spread understood how the SPP Day-Ahead Market make whole payment provisions were designed to work, and specifically intended to circumvent them by effectively converting SPP's daily eligibility period-based make whole payment calculation into an hourly one. By doing so, Enforcement determined

that Golden Spread caused SPP to issue make whole payments that Mustang Station would not otherwise have received had SPP assessed the full economics of the unit's daily operations.

16. Enforcement concluded that the strategy signaled to the market that Golden Spread was trading at Mustang Station based on market fundamentals when, in fact, it was trading for the improper purpose of targeting and inflating make whole payments.

17. Enforcement also concluded that while offering a unit in both market status and self-commit status intraday does not, by itself, violate SPP's Integrated Marketplace tariff, the specific strategy at issue here of switching commitment statuses intraday in order to target and increase make whole payments was inconsistent with, and violative of, SPP's make whole payment construct, which is designed to compensate units on an eligibility period basis.

18. Enforcement concluded that the strategy violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2, and resulted in Golden Spread improperly extracting $314,151 in make whole payments from the SPP market during the relevant period.

19. Enforcement further concluded that Golden Spread lacked an effective compliance program during the relevant period and failed to provide compliance training to its employees, which contributed to the violations.

III. Stipulation and Consent Agreement

20. Enforcement and Golden Spread have resolved the investigation by means of the attached Agreement.

21. Golden Spread stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the alleged violations set forth in Section III of the Agreement.

22. Golden Spread agrees to pay a civil penalty of $550,000 to the United States Treasury.

23. Golden Spread agrees to disgorge $375,000 (which includes interest) within 10 days of the Effective Date of the Agreement.

24. Golden Spread agrees to submit annual compliance reports and enhancements to its compliance program, in accordance with the terms of the Agreement.

IV. Determination of Appropriate Sanctions and Remedies

25. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness

of the conduct and recognizes the specific considerations stated above and in the Agreement.[4] The Commission emphasizes that transactions entered into not based on market fundamentals, but rather, based on a fraudulent intent, are prohibited by the Anti-Manipulation Rule.[5] Make whole payments are not intended to provide an incentive to resource owners to design offers that seek to target and inflate such payments.

26. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines,[6] including the fact that Golden Spread cooperated with Enforcement during the investigation. The Commission

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[4] Contrary to any suggestion in the dissent, the Commission carefully reviewed Enforcement's allegations and the record evidence presented, including Golden Spread's response to Enforcement's allegations. Enforcement contends that Golden Spread violated the Commission's Anti-Manipulation Rule by intentionally structuring its commitment status to target make whole payments. Enforcement alleges that, by switching between market and self-commit status intraday, Golden Spread obtained make whole payments greater than what it would have received had SPP assessed the full economics of the unit's daily operations where operating revenues would be offset against the unit's losses. To that end, Enforcement avers that "Golden Spread caused SPP to issue make whole payments that Mustang Station would not otherwise have received had SPP assessed the full economics of the unit's daily operations." *See* Agreement at P 16. Enforcement alleges that through the strategy, Golden Spread intentionally circumvented SPP's make whole payment provisions by effectively converting SPP's daily eligibility-period based make whole payment calculation into an hourly eligibility calculation. Enforcement concludes that Golden Spread's offering strategy signaled to the market that it was trading based on market fundamentals, when instead it was trading to target make whole payments. In an exercise of Golden Spread's own business judgment, it has determined to enter freely into this Agreement to resolve this matter. It is the Commission's longstanding policy to encourage settlements to resolve investigations, *Revised Policy Statement on Enforcement,* 123 FERC ¶ 61,156, at P 33 (2008), and our standard for considering a final negotiated settlement is whether the agreement is fair, equitable, and in the public interest. Nothing in the dissent or Golden Spread's response to Enforcement's allegations persuades us that this standard has not been met in this case.

[5] *See,* e.g., *Vitol Inc.*, Order Assessing Civil Penalties, 169 FERC ¶ 61,070, at P 128 (2019) ("this order reinforces that the Anti-Manipulation Rule prohibits *illegitimate* transactions entered into not based on market fundamentals, but rather, based on a fraudulent intent, and which inject false or fraudulent information into the market . . . ") (emphasis in original).

[6] *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines).

concludes that Golden Spread's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.[7]

27. The Commission directs Golden Spread to make the civil penalty and disgorgement payments as required by the Agreement within 10 days of the Effective Date of the Agreement.

28. The SPP market and its market participants bore the cost of Golden Spread's violation.

29. The Commission directs SPP to use its best efforts to allocate the disgorgement funds on a *pro rata* basis to affected market participants.

30. The Commission directs Golden Spread to comply with the provisions in the Agreement requiring it to submit annual compliance reports and undertake enhancements to its compliance program.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission. Commissioner Danly is dissenting with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

[7] *Id.*

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Golden Spread Electric Cooperative, Inc.   Docket No. IN21-9-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Golden Spread Electric Cooperative, Inc. (Golden Spread) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic, preliminary investigation (the Investigation) conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2021). Enforcement's Investigation addressed, among other things, whether Golden Spread violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2021), by offering Golden Spread's Mustang Station generating unit into the Southwest Power Pool, Inc. (SPP) market in a manner that improperly targeted and increased Day-Ahead Market make whole payments received by the unit.

2. Golden Spread stipulates to the facts in Section II, but neither admits nor denies the alleged violations in Section III. Golden Spread agrees to: (a) pay disgorgement plus interest, totaling $375,000; (b) pay a civil penalty of $550,000 to the United States Treasury; (c) be subject to compliance monitoring as provided more fully below; and (d) enhance its compliance program to include additional training requirements as provided more fully below.

II. STIPULATIONS

Enforcement and Golden Spread hereby stipulate and agree to the following facts:

3. Golden Spread is a non-profit, consumer-owned generation and transmission electric cooperative headquartered in Amarillo, Texas, and organized in 1984 to supply low-cost, reliable electric power to rural distribution cooperative members in the SPP and Electric Reliability Council of Texas markets. Golden Spread is owned and operated by 16 member cooperatives. Golden Spread's members provide electric service to approximately 306,000 electric meters serving member consumers located in the Panhandle, South Plains and Edwards Plateau regions of Texas, the Panhandle of Oklahoma, and small portions of Southwest Kansas and Southeast Colorado. Golden Spread is a public utility subject to the Commission's jurisdiction. Golden Spread owns and operates Mustang Station, a 521 MW (nameplate rated) natural gas-fueled combined cycle unit comprised of two combustion turbine generators and a steam turbine generator.

4. During the Investigation, Enforcement found evidence of an offering strategy at Mustang Station related to make whole payments. Make whole payments compensate

resource owners for their commitment and incremental energy costs for the period that SPP commits the unit in the Day-Ahead Market or through the reliability unit commitment (RUC) process, where market revenues are insufficient to cover the resource's short run variable costs. SPP has explained that the specific purpose of make whole payments is to keep resource owners indifferent to SPP's commitment decisions by incentivizing them to offer their units to SPP in market status so that SPP can make and optimize unit commitment decisions for the entire SPP market, as opposed to resource owners self-committing their units.

5. In SPP, there are five types of commitment status that resource owners may specify when submitting offers, two of which were relevant here: self-commit and market. Generally, in an hour when a resource self-commits, it is signaling to SPP that it wants the unit to stay online irrespective of prices. Accordingly, the resource becomes a price-taker for that hour and accepts any price the market sets. Although self-commitments limit the market's ability to reach economically efficient outcomes, there are legitimate reasons for self-committing a unit.

6. In an hour when a resource chooses market status, it is committing to sell a quantity of energy at a specific minimum price and grants SPP the option to commit the unit as it deems appropriate based on market conditions. A unit is eligible for a Day-Ahead Market make whole payment only for the hours it is offered in the Day-Ahead Market in market status and is committed by SPP.

7. Under its Integrated Marketplace tariff, SPP performs its Day-Ahead Market make whole payment calculation on a make whole payment eligibility period basis within a given Operating Day. Parameters for Day-Ahead make whole payments are specified in a mathematical calculation contained in the SPP Market Protocols. Specifically, as part of its calculation, SPP assesses whether a unit makes a profit or loss, in the aggregate, over the entire eligibility period it is online, in market status, and committed by SPP. SPP's calculation ignores hours when a unit is in self-commit status. Only if the aggregate profit or loss for all the hours the unit was in market status that day equals a loss, will SPP issue a make whole payment equal to the aggregate loss. SPP thus does not provide a make whole payment on an hourly basis for hourly losses.

8. After an extended outage that inhibited its ability to operate in a combined cycle configuration, Mustang Station returned to service on January 22, 2016. Initially, Golden Spread mostly offered the unit in self-commit status for the entire Operating Day. After departing from its outage, John P. Wieck, an electric trading analyst for Golden Spread, began analyzing whether Golden Spread could strategically offer Mustang Station in self-commit status during certain hours of the Operating Day.

9. Golden Spread first tested Mr. Wieck's strategy by splitting Mustang Station's Day-Ahead offer between hours 1 and 12 in self-commit status and hours 13 and 24 in

market status. When the market results came back, he determined that as he forecasted, Golden Spread could increase make whole payments at Mustang Station by strategically selecting self-commit status to isolate the times when Golden Spread forecasted that market revenues would be greater than the unit's costs.

10. On March 2, 2016 through March 14, 2016, Golden Spread offered Mustang Station in the Day-Ahead Market exclusively in market status. During a March 4 call, Mr. Wieck proposed that Golden Spread narrow Mustang Station's market status hours, and instead offer the unit in self-commit status during On-Peak hours. He explained that his goal was for Mustang Station to be made whole to a greater amount and avoid negating a make whole payment because the unit's On-Peak revenues were covering the cost of its Off-Peak losses. During this period, Tyson Boatler, Golden Spread's Manager Electric Trading and Mr. Wieck's direct supervisor, acknowledged internally that Mustang Station was not being kept whole on an hourly basis, but rather on a daily basis. Golden Spread thereafter reviewed SPP's formula for calculating Day-Ahead Market make whole payments as set out in the tariff and associated market protocols, and confirmed that because the numerator of the calculation formula sums all of the eligible hourly costs and revenues for the Operating Day, this allows revenues from the Operating Day to offset any Day-Ahead Market make whole payments that would have otherwise been received from an hourly loss.

11. On March 15, 2016, Golden Spread began implementing the strategy, and did so through September 14, 2016 (Relevant Period). During the Relevant Period, on approximately half the days Golden Spread offered Mustang Station in only market status, self-commitment status, or reliability status for the entire 24-hour period of the Operating Day. Mustang Station did not experience losses over those Operating Days while the unit was being offered this way. However, on 91 days during the Relevant Period, as part of the strategy, Golden Spread began offering Mustang Station in self-commit status in hours when it forecasted that market revenues would be greater than the unit's costs, and market status during hours when it forecasted that the unit's costs would be greater than market revenues.

12. Golden Spread received $314,151 in make whole payments from the SPP market for those 91 days as a direct result.

13. Golden Spread cooperated fully with the Investigation.

III. VIOLATIONS

14. During the Investigation, Enforcement found evidence that Golden Spread offered Mustang Station in market status when it expected Mustang Station to be unprofitable (i.e., the unit's costs are greater than market revenues), and switched to self-commit status in hours when it expected Mustang Station to be profitable (i.e., market revenues are greater

than the unit's costs), in order to isolate and exclude profitable hours from SPP's daily make whole payment calculation. By isolating those profitable hours, the aggregate profit or loss for all the remaining hours of the day, when the unit was in market status, would equal a loss, and SPP would issue a make whole payment. Enforcement concluded that the strategy signaled to the market that Golden Spread was trading at Mustang Station based on market fundamentals when, in fact, Enforcement found that it was trading for the improper purpose of targeting and maximizing make whole payments.

15. Enforcement also concluded that while offering a unit in both market status and self-commit status intraday does not, by itself, violate SPP's Integrated Marketplace tariff, the specific strategy at issue here of switching commitment statuses intraday in order to target make whole payments and receive compensation from SPP on an hourly basis, was inconsistent with, and violative of, SPP's make whole payment construct, which is designed to compensate units on an eligibility period basis.

16. Enforcement also found that Golden Spread understood how the SPP Day-Ahead Market make whole payment provisions were designed to work, and specifically intended to circumvent them by effectively converting SPP's daily eligibility period-based make whole payment calculation into an hourly one. By doing so, Golden Spread caused SPP to issue make whole payments that Mustang Station would not otherwise have received had SPP assessed the full economics of the unit's daily operations.

17. Enforcement concluded that the strategy violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2, and resulted in Golden Spread improperly extracting $314,151 in make whole payments from the SPP market during the Relevant Period.

18. Enforcement further concluded that Golden Spread lacked an effective compliance program during the Relevant Period and failed to provide compliance training to its employees, which contributed to the violations.

IV. REMEDIES AND SANCTIONS

19. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from Enforcement's Investigation, Golden Spread agrees with the facts as stipulated in Section II of this Agreement, but it neither admits nor denies the violations described in Section III of this Agreement. Golden Spread further agrees to undertake obligations set forth in the following paragraphs.

A. Civil Penalty

20. Golden Spread shall pay a civil penalty of $550,000 to the United States Treasury within 10 days of the Effective Date of this Agreement.

B. Disgorgement

21. Golden Spread shall disgorge $375,000 (which includes interest) to SPP within 10 days of the Effective Date of this Agreement.

C. Compliance Monitoring and Training

22. To further enhance its compliance program, Golden Spread employees in the Commercial and Asset Operations group, Finance, Accounting Billing and Risk group, Compliance, Regulatory, and Legal group, Executive staff and other plant and market personnel shall complete at least 200 aggregate hours of market, anti-manipulation, tariff and corporate compliance training per year, for two years, as directed by its Corporate Compliance department. Annual training will be completed by the first and second anniversary of the Effective Date of this Agreement.

23. Golden Spread shall submit an annual compliance monitoring report to Enforcement for two years following the Effective Date of this Agreement, with an additional year at Enforcement's discretion. The first report shall be submitted no later than 30 days after the first anniversary of the Effective Date. The second report shall be submitted no later than 30 days after the second anniversary of the Effective Date. After the receipt of the second annual report, Enforcement may, at its sole discretion, require Golden Spread to submit a third annual report for the following year.

24. Each compliance monitoring report shall: (1) identify any known or alleged violations of market or Commission rules, tariff provisions, and regulations during the applicable period related to offering Golden Spread's generating units, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe modifications to corporate compliance measures and procedures during the applicable period related to compliance with market and Commission rules, tariff provisions, and regulations related to offering Golden Spread's generating units; and (3) describe all related compliance training that Golden Spread administered during the applicable period, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

25. Each compliance monitoring report shall also include an affidavit executed by an officer of Golden Spread stating that it is true and accurate to the best of his/her knowledge.

26. Upon request by Enforcement, Golden Spread shall provide to Enforcement documentation supporting the contents of its reports.

V. TERMS

27. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein that arose on or before the Effective Date as to Golden Spread and any affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

28. Commission approval of this Agreement without material modification shall release Golden Spread and forever bar the Commission from holding Golden Spread, any affiliated entity, any successor in interest, and their respective agents, officers, directors, or employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the Investigation, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement's Effective Date.

29. Failure by Golden Spread to make the disgorgement or civil penalty payments, or to comply with the compliance reporting obligations agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act (FPA), 16 U.S.C. § 792, et seq., and may subject Golden Spread to additional action under the enforcement provisions of the FPA.

30. If Golden Spread does not make the required civil penalty and disgorgement payments described above within the times agreed by the parties, interest shall begin to accrue at the rates specified at 18 C.F.R. § 35.19a(a)(2)(iii) (2021) from the date that payment is due, in addition to any other enforcement action and penalty that the Commission may take or impose.

31. This Agreement binds Golden Spread and its agents, successors, and assignees. This Agreement does not create any additional or independent obligations on Golden Spread, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

32. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or Golden Spread has been made to induce the signatories or any other party to enter into the Agreement.

33. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Golden Spread shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Golden Spread.

34. In connection with the civil penalty provided for herein, Golden Spread agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b). Golden Spread waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

35. This Agreement can be modified only if in writing and signed by Enforcement and Golden Spread, and any modifications will not be effective unless approved by the Commission.

36. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

37. The undersigned representative of Golden Spread affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

38. This Agreement may be executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and Accepted:

JANEL BURDICK Digitally signed by JANEL BURDICK Date: 2021.06.21 12:00:47 -04'00'

Janel Burdick
Acting Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: 6/21/21

Digitally signed by Craig Silverstein
DN: cn=Craig Silverstein gn=Craig Silverstein c=US United States l=US United States o=March Counsel LLC e=craig.silverstein@marchcounsel.com
Location: Washington, DC
Date: 2021-06-17 17:30-04:00

Craig Silverstein
Attorney for Golden Spread Electric Cooperative, Inc.

Date: 6/17/21

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Golden Spread Electric Cooperative, Inc.   Docket No. IN21-9-000

(Issued November 18, 2021)

DANLY, Commissioner, *dissenting*:

1. This case represents another instance of the Commission penalizing a market participant for doing nothing more than attempting to maximize its revenues in conformity with the provisions of the tariff under which it operates. But this case is unlike earlier cases—like the Up-to-Congestion (UTC) cases—where, arguably, the conduct at issue had no independent economic substance and provided no market benefit. Here, Golden Spread Electric Cooperative, Inc. (Golden Spread) responded to the incentives established by Southwest Power Pool's (SPP) open access transmission tariff (Tariff) in the very manner in which SPP intended, and in so doing provided the exact benefit to the market that SPP stated the Tariff was designed to achieve. Because Golden Spread acted within both the spirit and the letter of the Tariff, it could not have committed market manipulation. I therefore dissent in full.

2. I recognize that Golden Spread executed the Stipulation and Consent Agreement (Settlement Agreement) now before us and that it agreed to pay a penalty. Ordinarily, I hesitate to intervene when parties come to a settlement. But this is not a typical settlement. It is a settlement in an enforcement case. Throughout the investigation, Golden Spread adamantly denied any wrongdoing and does not now admit to any violation. It is apparent that Golden Spread has made a clear-eyed, economically-rational decision to choose the lesser of two evils: extinguish the Office of Enforcement's claim by agreeing to pay a civil penalty instead of further litigating this case at a cost that would greatly exceed the cost of settlement. Although I perfectly understand Golden Spread's decision, its agreement is not an admission of guilt, and our duty as a Commission requires us to scrutinize this voluntary agreement. Because Enforcement Staff's allegations have no validity, what the Commission should have done here is reject the settlement, order Enforcement Staff's investigation terminated, and take no further action.

3. I strongly believe the Commission should have a robust enforcement program, and I have voted for a number of orders penalizing entities that have engaged in manipulation or have intentionally violated our orders. But having a robust enforcement program does not mean blindly accepting Enforcement Staff's allegations without carefully evaluating their merit, even when the matter before us is the approval of a settlement agreement and not a Commission order adjudicating liability.

I. Background

4. As explained in the Commission's order approving the settlement, two types of commitment status are relevant here: (1) self-commit, and (2) market.[1] When the owner of a generation facility wants its unit to operate outside of SPP's control, it can offer its unit in self-commit status. When a unit is offered in self-commit status, SPP is obligated to commit the unit, regardless of SPP's evaluation of market conditions or the most efficient commitment for the region as a whole. When the owner offers its unit in market status, the owner transfers control of the commitment of the unit to SPP, which then has the option to commit the unit as it deems appropriate based on market conditions.

5. Not surprisingly, SPP prefers for units to be offered in market status. To create an incentive for generation owners to offer in market status, SPP filed (and the Commission approved) tariff provisions providing for make-whole payments to generation owners in order to protect them from incurring losses when SPP controls their commitment. SPP stated that the payments are intended to make resource owners economically "indifferent to SPP's commitment decisions,"[2] so that SPP can optimize unit commitment decisions for the entire market, without being constrained by market participants' self-commitment based solely on their own economics.[3]

6. Under these tariff provisions, SPP calculates potential make-whole payments for each "commitment period" in which a resource is offered in market status.[4] A commitment period is the continuous period of time between a resource's commit time and de-commit time—*e.g.*, the period of time between when a resource is committed and either is decommitted or no longer is offered in market status.[5] SPP does not determine a resource's make-whole payments separately for each hour of a commitment period. Instead, SPP nets the payments needed to make the resource whole in those hours during the commitment period when the resource operates at a loss from the profits earned in the

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[1] *Golden Spread Elec. Cooperative, Inc.*, 177 FERC ¶ 61,109, at P 5 (2021).

[2] *Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048, at P 134 (2012).

[3] *See Sw. Power Pool, Inc.*, Docket No. ER12-1179-000, Submission of Tariff Revisions to Implement SPP Integrated Marketplace at 27 (Feb. 29, 2012).

[4] *See* Tariff, Attach. AE Integrated Marketplace, Section 8.5.9(1), Day-Ahead Make Whole Payment Amount (effective Mar. 1, 2015; superseded May 1, 2016, but the language remained unchanged); SPP Market Monitoring Unit, State of the Market 2016, at 7, https://www.spp.org/documents/53549/spp_mmu_asom_2016.pdf.

[5] Tariff, Attach. AE Integrated Marketplace, Section 1.1, Definitions R, Reliability Unit Commitment Period (effective Mar. 1, 2015; superseded Sept. 23, 2015, but the language remained unchanged). A commitment period may extend across multiple days.

hours in the commitment period when the resource's market revenues exceed its costs.[6] Only if the resource operates at a net loss for the entire commitment period does it receive a make-whole payment equal to that net loss.

7. For purposes of this case, it must be borne in mind that the Tariff allows market participants to establish the length of the commitment period used to determine make-whole payments by switching from market to self-commit status in a single day.[7] It is entirely acceptable under the Tariff for a resource owner to offer in self-commit status for some hours in a day and in market status for other hours in the same day. The Tariff also permits switching back and forth repeatedly in the course of a day (something Golden Spread did not do).

8. This case involves Golden Spread's strategy intended to maximize the revenues it earned from its Mustang Station, consistent with the make-whole provisions of the Tariff. Prior to the period that was the subject of Enforcement Staff's investigation (Relevant Period), Golden Spread typically offered Mustang Station in self-commit status 24 hours a day. During this time, SPP had no control over the commitment of Mustang Station and was obligated to honor Mustang Station's self-commitment every hour it was offered, but SPP was not required to award Mustang Station any make-whole payments. As a result, Golden Spread lost money in the low-load periods when its costs were higher than its market revenues.

9. Under the new strategy that earned Golden Spread the attention of Enforcement Staff, it stopped submitting self-commit offers during the low-load hours (typically the first few hours of the day) when its costs typically exceeded market revenues and it previously lost money in its operations. Instead, Golden Spread submitted market offers for those hours and was entitled to make-whole payments when Mustang Station was committed by SPP and otherwise would have operated at a loss. The submission of market offers for these hours made Golden Spread economically indifferent to SPP's commitment decisions and gave SPP control over the commitment of Mustang Station, just as SPP intended.

10. After offering Mustang Station in market status for the early morning hours, Golden Spread typically offered Mustang Station in self-commit status for the remainder of the day, which included higher-load hours when Golden Spread expected Mustang Station to be profitable. SPP does not include hours when a unit is offered in self-commit status as part of the commitment period used to calculate make-whole payments, so the profits Golden Spread earned when it offered Mustang Station in this status were not used

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[6] *See* Tariff, Attach. AE Integrated Marketplace, Section 8.5.9(1), Day-Ahead Make Whole Payment Amount.

[7] *See* Tariff, Attach. AE Integrated Marketplace, Section 4.1, Offer Submittal, subsection (4) (effective Mar. 1, 2015; superseded Sept. 23, 2015, but the language Remained unchanged) ("Offers may be submitted that vary for each hour of the Operating Day . . . .").

to offset the make-whole payments Golden Spread received when Mustang Station was offered in market status and operated at a loss. This switch between market status and self-commit status was *expressly permitted* by the Tariff, and at no time did SPP object to Golden Spread's use of a commitment period of less than one day.

11. Golden Spread's offer strategy gave SPP control over the commitment of Mustang Station when it was offered in market status, and thereby provided the market benefits SPP stated it wanted when it established the make-whole payment program. Although SPP frequently committed Mustang Station in those hours, there were a number of days during the Relevant Period when Mustang Station was offered in market status but was not committed by SPP. This meant that SPP was able to optimize unit commitments for the market in those hours by not committing Mustang Station, something SPP would have been unable to do if Golden Spread had continued to offer Mustang Station in self-commit status. SPP instead would have been obligated to accept Mustang Station's self-commitment and that presumably would have prevented SPP from committing a different resource in such a way as to optimize generation commitment throughout the whole of SPP's market.

II. Enforcement Staff's Allegations

12. The gravamen of Enforcement Staff's claim is that Golden Spread attempted to maximize its revenues in a manner that Enforcement Staff apparently finds to be objectionable. But asserting that Golden Spread employed a strategy to maximize the revenues it earned in SPP's market is not sufficient to demonstrate a violation of the Anti-Manipulation provisions of Federal Power Act (FPA) section 222[8] and the Commission's regulations.[9] Instead, Enforcement Staff must demonstrate that Golden Spread's strategy was in some way manipulative or fraudulent. None of Enforcement Staff's theories even remotely satisfy this burden.

13. Enforcement Staff's first theory is that Golden Spread's "strategy signaled to the market that Golden Spread was trading at Mustang Station based on market fundamentals when, in fact, Enforcement found that it was trading for the improper purpose of targeting and maximizing make whole payments."[10] This circular argument does not demonstrate fraud or manipulation, because it depends entirely on Enforcement Staff's assumption that the trading was fraudulent and manipulative. If the trading was not for an "improper purpose"—and there is no evidence that it was—the trading could not have deceived the market.

14. Further, Enforcement Staff's contention that the market was deceived because Golden Spread's trades were not based on market fundamentals is, itself, false. Golden

[8] 16 U.S.C. § 824v.

[9] 18 C.F.R. § 1c.2.

[10] Settlement Agreement at P 14.

Spread's strategy was based *entirely* on market fundamentals. Golden Spread offered Mustang Station in market status during low-load hours when prices were likely to be low, so that it would not be committed when prices were below Mustang Station's marginal costs. That is the very definition of an offer based on market fundamentals. Golden Spread's switch to self-commit status when it expected market prices to be high is likewise an action based on market fundamentals because Golden Spread offered in self-commit status when it expected such an offer to be profitable. Staff does not—and could not—allege that Golden Spread's switch from market to self-commit status had any effect on any market price. Golden Spread's offers were economically rational and based on market fundamentals, and as a result no false signals could have been sent to the market.[11]

15. Enforcement Staff's second theory is that Golden Spread's "strategy at issue here of switching commitment statuses intraday in order to target make whole payments and receive compensation from SPP *on an hourly basis*, was inconsistent with, and violative of, SPP's make whole payment construct, which is designed to compensate units *on an eligibility period basis*."[12] Whatever merit there might be to a claim that it would be improper to switch between market and self-commit status on an hourly basis, this theory misstates how Golden Spread offered the Mustang Station into the market. Golden Spread did not switch its offers on an hourly basis in order to target make-whole payments. Instead, Golden Spread offered Mustang Station in market status for several consecutive hours in the early morning, and then almost always in self-commit status the rest of the day.[13] Thus, Golden Spread's make-whole payments were determined on an "eligibility period" of multiple consecutive hours. As Enforcement Staff admits, this is what the Tariff contemplates.[14]

16. Enforcement Staff's third and final theory is that "Golden Spread caused SPP to issue make whole payments that Mustang Station would not otherwise have received had

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[11] Further, the provisions of SPP's tariff permitting the establishment of a commitment period of less than a day were an integral part of the market, and Golden Spread's strategy based on these provisions was a reaction to the "market fundamentals" created by these Tariff provisions.

[12] Settlement Agreement at P 15 (emphasis added).

[13] On a few occasions, Golden Spread also offered Mustang Station in market status for the last one or two hours of the day.

[14] Settlement Agreement at P 15 ("Enforcement also concluded that . . . offering a unit in both market status and self-commit status intraday does not, by itself violate SPP's Integrated Marketplace Tariff . . . .").

SPP assessed the full economics of *the unit's daily operations*."[15] In other words, Golden Spread would not have received the same amount of money from make-whole payments if SPP had evaluated the unit's economics by netting its losses and revenues on a daily basis. True, but completely beside the point. The Tariff does not require make-whole payments to be calculated on the basis of a unit's daily operations. Instead, the Tariff provides that the make-whole payments are calculated on the basis of a commitment period that can be less than a full day. The Tariff also specifically provides that the length of a commitment period is determined entirely by the owner of the unit at its sole discretion. That the calculation of make-whole payments made over an entire day is different from the calculation of make-whole payments over a multi-hour commitment period of less than a day is an artifact of the mechanics of the Tariff, and simply cannot serve as the basis of a manipulation claim.

17. For some reason, Enforcement Staff has come up with the idea that Golden Spread's strategy was contrary to SPP's intent when it established the make-whole payment mechanism in the Tariff.[16] However, record evidence demonstrates that SPP established the make-whole payment provisions in order to ensure that generation owners would be economically indifferent to SPP's commitment decisions. And that is what happened here. When Golden Spread offered the Mustang Station in market status, it gave SPP control over its commitment allowing SPP to optimize generation commitment across its footprint. And the make-whole payments caused Golden Spread to be economically indifferent as to whether its unit was committed.

18. The entire structure of SPP's tariff suggests that SPP would find Golden Spread's offer strategy to be wholly legitimate. It is allowed by the plain terms of the Tariff and nothing in the Tariff would indicate that it was disallowed. Were it otherwise, the Tariff would have required a daily market status offer to qualify for make-whole payments and would not have permitted generation owners to switch between market and self-commit status at any time, at their discretion. There is no such requirement, and SPP has not filed to change its Tariff.

19. I think it is important at this point to pause and offer an observation regarding the significant difference between the case before us and other enforcement cases in which the Commission has imposed penalties on market participants even though their actions were consistent with the relevant tariff provisions:

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[15] *Id.* P 16 (emphasis added).

[16] It is, of course, completely irrelevant what SPP's "intent" was, to the extent that there can be said to be such a thing. What matters is the Tariff. But since Enforcement Staff seems to rely on SPP's intent to make out its claim against Golden Spread, the subject warrants discussion.

City Power.[17] In this case, City Power entered into three types of UTC trades: (1) "'round-trip' trades that canceled each other out by placing the first leg of the trade from locations A to B, and simultaneously placing a second leg of equal volume from locations B to A"; (2) "trades between two PJM nodes . . . that are import and export pricing points of the same PJM interface designed to have equivalent prices"; and (3) "trades between two PJM nodes . . . that historically had a very small price spread and in most hours failed to generate spreads greater than the transaction costs associated with the trades."[18] Because these trades essentially cancelled each other out, they appeared to have no economic substance and appeared to be executed solely to generate marginal loss payments.[19] The Commission found that these trades provided no benefits to the PJM market and therefore were manipulative.[20]

Other UTC Cases. Other UTC cases in which the Commission imposed penalties have essentially the same facts; offsetting trades with apparently no economic substance engaged in to collect marginal loss payments while providing no economic benefits to the PJM market.[21]

Paper Mill Demand Reduction Cases. In these cases, certain paper mills were found to have artificially altered their baseline consumption when qualifying as demand resources. By so doing, they were paid for capacity benefits that in fact they were not providing.[22]

20. In each of the above cases, the central reason for the Commission's finding was that, although the manipulative conduct was arguably not prohibited by the relevant tariff,

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[17] *City Power Mktg., LLC*, 152 FERC ¶ 61,012 (2015) (*City Power*).

[18] *Id*. P 3.

[19] *See id.*

[20] *See id.* PP 5-6.

[21] *See Houlian Chen*, 151 FERC ¶ 61,179, at P 49 (2015); *Coaltrain Energy, L.P.*, 155 FERC ¶ 61,204 (2016).

[22] *Competitive Energy Servs., LLC*, 144 FERC ¶ 61,163 (2013); *Richard Silkman*, 144 FERC ¶ 61,164 (2013); *Lincoln Paper & Tissue, LLC*, 144 FERC ¶ 61,162 (2013).

the conduct had no real substance (for example the UTC trades that cancelled each other out) and provided no economic benefit to the market. This case is completely different. Here, Golden Spread's market offers provided the benefit contemplated by the Tariff—the commitment of Mustang Station being placed under SPP's control—which Golden Spread agreed to do because the make-whole payments made it indifferent to whether the unit was committed. This provided *obvious* benefit to the market, indeed the very benefit that make-whole payments were designed to achieve: the optimized commitment of generation across SPP's territory.

21. Today's case represents a significant and unjustifiable expansion of our earlier precedent. In the past, while we applied a somewhat vague and subjective standard, it was at least possible to come away with some intuitive understanding of what types of conduct Enforcement Staff would find improper and why.[23] In the cases cited above, for example, it is at least credible for the Commission to have found it improper to make trades with little or no economic substance that provide no benefit to the market simply for the purpose of obtaining a side-payment provided for by the market rules. In contrast, this is a case in which not only were the target's actions not prohibited by the Tariff, they were based on market fundamentals and delivered the benefits to the market that the Tariff was designed to obtain, by the exact means established by the Tariff's plain language.

22. Today's order will leave market participants with no way of knowing whether economically substantive and rational profit-maximizing trades, made in conformity with applicable tariffs, will be found to be manipulative. Market participants making such trades can only hope that they do not catch Enforcement Staff's attention. Enforcement Staff views all such trades through black-colored glasses and the Commission has demonstrated that it will not question Enforcement Staff's claims of manipulation even when they are as obviously meritless as those before us today.

For these reasons, I respectfully dissent.

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James P. Danly
Commissioner

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[23] I pause to note that I do not believe that an intuitive understanding of malefaction is sufficient, in itself, to make out a successful enforcement claim. I merely raise this point to highlight the Commission's departure from its earlier cases. In many cases, the types of improper behavior that have been investigated by the Office of Enforcement at least have analogues under section 10(b) of the Securities Exchange Act, a basis for enforcement action specifically contemplated by the Energy Policy Act of 2005. *See* 16 U.S.C. § 824v(a).

Document Content(s)

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